

NECCOG

northeastern connecticut council of governments

September 23, 2013

VIA U.S. MAIL AND EMAIL: consultation@bia.gov

Elizabeth Appel
Office of Regulatory Affairs & Collaborative
Action
U.S. Department of the Interior
1849 C Street, NW
MS 4141
Washington, DC 20240

Re: *Discussion Draft Rule Part 83, Title 25*

Dear Ms. Appel:

I am the Executive Director of the Northeastern Connecticut Council of Governments ("NECCOG") and write to you with respect to the draft proposed changes to the Part 83 process for administratively acknowledging federally recognized tribes. NECCOG -- and each of its constituent towns -- strongly urges the department to take no further action on the draft proposal without significant revisions as certain of the changes eviscerate core, historical requirements of what is necessary to demonstrate the bases for federal recognition.

NECCOG is a regional council of local governments representing the Connecticut towns of Ashford, Brooklyn, Canterbury, Eastford, Killingly, Plainfield, Pomfret, Putnam, Sterling, Thompson, Union and Woodstock, all located in the northeastern corner of Connecticut. NECCOG is organized under the authority of Connecticut General Statutes § § 4-124i to 4-124p. In accordance with Connecticut law, a regional council of governments exercises the powers of a regional council of elected officials and a regional planning agency. NECCOG is charged with considering matters affecting the health, safety, welfare, education and economic conditions of the area comprised by its member towns.

NECCOG supports efforts by the BIA to improve the transparency and efficiency of the federal recognition process, but such efforts should not be at the expense of undermining the requirement that any petitioner must demonstrate a distinct historic continuity of tribal existence -- both politically and culturally -- in order to receive federal acknowledgement. In that regard,



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NECCOG believes that the changes reflected in § 83.10(g) significantly undermine the federal recognition process.

The draft proposed rule incorporating the expedited favorable finding based on the existence of a “reservation recognized by the State” (§ 83.10(g)(3)(i)) dramatically weakens the existing acknowledgement criteria by eliminating the need to show essential requirements. Specifically, a petitioner that provides evidence showing it met § 83.10(g)(3)(i) would no longer be required to demonstrate the existence of “a distinct community” or that the “petitioner has maintained political influence or authority over its members as an autonomous Indian group” -- two requirements that have always been -- and should continue to be -- at the core of federal acknowledgement. As past BIA decisions and court cases have held, the existence of a state reservation is not a proxy for those two criteria.

The changes proposed in this draft rule would appear to have significant and direct consequences for Connecticut and its towns. Indeed, several petitioners who have members living in Connecticut and who have previously failed to satisfy the criteria for federal acknowledgement could arguably re-petition for federal acknowledgement under the draft proposed rules. In those cases, the petitioners were previously denied federal acknowledgement on multiple grounds, including the failure to demonstrate the distinct historical cultural and political authority requirements essential to acknowledgement. On appeal, the decisions to deny those petitioners’ requests were upheld by the courts. The draft proposed rules would turn these decisions and opinions on their heads and would place a value on the existence of a state reservation that neither the BIA nor the courts found was warranted by the actual facts.

The existence of a state reservation should be entitled to no more weight than that given to the existence of state recognition of an Indian tribe. The BIA has consistently concluded that evidence of state recognition of an Indian group cannot relieve a petitioner of its burden to meet the federal acknowledgement criteria. This conclusion has primarily been based on the understanding that the process for state recognition is not uniform and may merely require evidence of descent, rather than the historic cultural and political authority elements essential to the sovereignty conveyed to a tribe through federal recognition. As established by precedent, there is no basis for treating state recognized reservations differently.

NECCOG firmly supports a fair, robust federal acknowledgement process that provides recognition for those petitioners who can demonstrate the distinct, historic cultural and political authority of their tribes. To weaken those requirements would allow groups to receive recognition who are unable to demonstrate that core criteria. In so doing, the BIA could cause significant harm to NECCOG’s members and other local towns and landowners. Indeed, the consequences to towns and landowners near federally recognized tribes are often momentous and incalculable. In Connecticut, towns near federally recognized tribes have experienced the loss of tax base, the potential for land claims against private landowners, and loss of regulatory control over land. Coupled with the loss of revenue and regulatory control, these towns have also experienced increased burdens on town infrastructure and services, including to schools, roads and public safety needs.

NECCOG has also reviewed the comments submitted by Connecticut's congressional delegation and Governor Dannel Malloy, and agrees with and adopts the comments set forth therein.

For the foregoing reasons, NECCOG and its members strongly object to these changes to the administrative federal acknowledgment process contained in the draft proposed rule and urge the BIA to retain the existing criteria.

Thank you for your consideration.

Very respectfully yours,

A handwritten signature in black ink, appearing to read "John Filchak", written over a horizontal line.

John Filchak
Executive Director

Cc: Secretary of the Interior Sally Jewell
Assistant Secretary for Indian Affairs Kevin Washburn
Connecticut Congressional Delegation
Governor Dannel Malloy
Attorney General George Jepsen